UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

February 19, 2016

(b) (6), (b) (7)(C)

Re: IHRC
Case 10-CA-162621

Dear (b) (6), (b) (7)(C)

This office has carefully considered the appeal from the Regional Director's refusal to issue complaint. We agree with the Regional Director's decision and deny the appeal.

The Regional Office investigation disclosed insufficient evidence to establish that the Employer violated the National Labor Relations Act, as alleged. To establish that the Employer engaged in a discriminatory refusal to hire, you must show, among other things, that you engaged in protected activity and that the Employer had knowledge of this fact. *Director, Office of Workers' Comp. Programs v. Greenwich Collieries*, 512 U.S. 267, 278 (1994), *clarifying NLRB v. Transportation Management*, 462 U.S. 393, 395, 403 n.7 (1983).

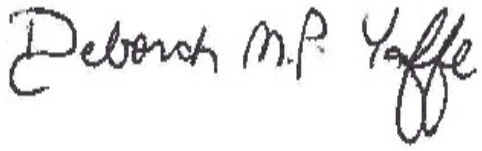
In your case, the activity that you claim motivated the Employer's discrimination was not protected activity because you engaged in such activity solely on your behalf. *Meyers Industries I*, 268 NLRB 493, 497 (1984). Further, there is no evidence to suggest that the person who declined to hire you had any knowledge of the activity in question. In your appeal, you discuss a separate incident of alleged discrimination that occurred in (b) (6), (b) (7)(C) 2014. Inasmuch as you contend this establishes that the Employer had knowledge and harbored animus towards you, we find that this is still insufficient to establish that the Employer retaliated against you because your alleged activity does not constitute protected concerted activity within the meaning of the Act. Therefore, there is insufficient evidence to establish that the Employer violated the Act, as alleged.

You appeal also discusses the Board's recent joint employer decision in *Browning-Ferris Industries of California, Inc.*, 362 NLRB No. 186 (Aug. 27, 2015). We conclude that the Board's decision in *Browning-Ferris* is not relevant to the allegations contained in your unfair labor practice charge.

Accordingly, we deny your appeal.

Sincerely,

Richard F. Griffin, Jr.
General Counsel



By: _____
Deborah M.P. Yaffe, Director
Office of Appeals

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UNITED STATES GOVERNMENT
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Washington, DC 20570

August 16, 2016

CAREN P. SENCER, ESQ.
WEINBERG, ROGER & ROSENFELD
1001 MARINA VILLAGE PKWY STE 200
ALAMEDA, CA 94501-6430

Re: Labor Plus, LLC/ Wynn Las Vegas, LLC
Cases 28-CA-161779
28-CA-166571
28-CA-166890

Dear Ms. Sencer:

This office has carefully considered your appeal. The appeal is sustained in part and denied in part.

In Case 28-CA-161779, we concluded that the Wynn Las Vegas, LLC, (Wynn), as a successor employer, arguably violated Sections 8(a)(1) and (5) of the National Labor Relations Act by failing to bargain with the Union and failing to provide requested information. Additionally, in Case 28-CA-166890 Wynn arguably violated Section 8(a)(1) and (5) of the Act, as alleged, by subcontracting bargaining unit work on the Frank Sinatra 100th Anniversary Show held at the ShowStoppers theatre. Finally, in Case 28-CA-166571, Labor Plus, LLC (Labor Plus) arguably violated Section 8(a)(1) and (5) of the Act by failing to bargain with the Union concerning the Labor Plus work on the Frank Sinatra show at the ShowStoppers theatre.

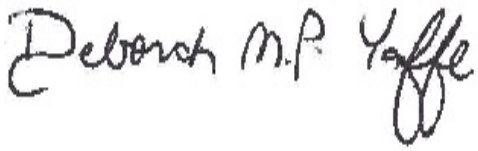
We are dismissing the allegations in Case 28-CA-161779 that Wynn and Labor Plus are joint employers and that Wynn and Labor Plus violated the Act by discriminating against employees by terminating them for engaging in protected activities.

We are remanding the case to the Regional Director for further action. Absent settlement,

the Regional Director will issue a complaint and an administrative law judge will hold a hearing. Please address all further inquiries to the Regional Director.

Sincerely,

Richard F. Griffin, Jr.
General Counsel



By: _____
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UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, DC 20570

July 20, 2018

JONATHAN MAGNA, ATTORNEY
ILLINOIS ADVOCATES, LLC
77 W WASHINGTON ST STE 2120
CHICAGO, IL 60602-2995

Re: SMG
Case 13-CA-209118

Dear Mr. Magna:

We have carefully considered your appeal from the Regional Director's refusal to issue complaint. We agree with the Regional Director's decision and deny your appeal.

On appeal, you contend that the Employer, a security contractor, acted as a joint employer with another business entity, the client. The client contracted with the Employer for security services at two sites, one of which was the pier. You further contend that in October 2016 the Employer and the client made false representations to the Union that the client was withdrawing its request for proposals for a new security contractor at the pier. The Union detrimentally relied on these representations when in January 2017 it reached a subsequent collective-bargaining agreement with the Employer covering the Union represented employees at the pier.

Contrary to your contentions on appeal, the totality of the evidence was insufficient to establish that the Employer and the client were joint employers under either the current standard in *BFI Newby Island Recyclery*, 362 NLRB No. 186 (2015) or the former standard in *Hy-Brand Indus. Contractors, Ltd.*, 365 NLRB No. 156 (2017)(*Hy-Brand I*), vacated 366 NLRB No. 26 (2018)(*Hy-Brand II*). Similarly, it could not be established that the Employer or the client made false representations to the Union or repudiated the January 2017 agreement. Lastly, the Employer did not change employees' terms of employment at the pier, but in May 2017 lost the security contract to the new contractor selected by the client. As a result of this change in contractors, the Employer's unit employees who worked at the pier and who were represented by the Union suffered changes in their employment conditions.

However, the preponderance of the evidence revealed that the Employer notified the Union that it lost the security contract for the pier and afforded the Union meaningful opportunity to bargain over the effects of the loss of the contract. Accordingly, we deny your appeal.

Sincerely,

Peter Barr Robb
General Counsel

By: _____
Mark E. Arbesfeld, Director
Office of Appeals

cc: PETER SUNG OHR
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